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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/910,933	07/24/2001	Marc Alan Reshefsky	X-9343	3558

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EXAMINER

LELE, TANMAY S

ART UNIT	PAPER NUMBER
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2684

DATE MAILED: 03/25/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/910,933

Applicant(s)

RESHEFSKY, MARC ALAN

Examiner

Tanmay S Lele

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-14 is/are allowed.
- 6) ☒ Claim(s) 1-7 and 15-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 July 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Allowable Subject Matter

1. Claims 8 – 14 are allowed.

Regarding claim 8, the present invention is of an apparatus for providing portable audio programming for a user while preventing the user from missing telephone calls comprising: a pair of headphones, each headphone being provided with a housing with a speaker mounted therein; a head band connecting said headphones adapted to be fitted over the head of a user, said head band also containing electrical transmission means connected to the speakers in the headphones; at least one of said headphones housings being provided with at least a pair of female ports adapted to receive cable plugs secured to the end of cables, said cables being constructed to engage an auxiliary audio device and a cellular telephone; switching circuit means located in said housing in connection with at least one of said female ports to interrupt audio signals transmitted from an auxiliary audio device when a cellular telephone is activated by an incoming call; and a microphone mounted on a cable leading from said housing to said cellular telephone for receiving and transmitting audible messages occurring during a telephone conversation. The closest prior art, Jones (Jones, US Patent No. 6,606,506) in view of Antle (Antle, US Patent No. 4,499,593) in further view of Kim (Kim, US Patent No. 6,278,884) teach of an apparatus for providing portable audio programming for a user while preventing the user from missing telephone calls comprising: a pair of headphones, each headphone being provided with a housing with a speaker mounted therein; a head band connecting said headphones adapted to be fitted over the head of a user, said head band also containing electrical transmission means connected to the speakers in the headphones; and a microphone mounted on a cable leading from

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said housing to said cellular telephone for receiving and transmitting audible messages occurring during a telephone conversation, but alone or in combination with other prior art not specifically of at least one of said headphones housings being provided with at least a pair of female ports adapted to receive cable plugs secured to the end of cables, said cables being constructed to engage an auxiliary audio device and a cellular telephone; switching circuit means located in said housing in connection with at least one of said female ports to interrupt audio signals transmitted from an auxiliary audio device when a cellular telephone is activated by an incoming call.

Claims 9 – 14 are allowable as being dependent on claim 8.

2. Claims 15 – 20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Regarding claim 15, the present invention is of an apparatus for providing portable audio programming for a user while preventing the user from missing telephone calls comprising: a pair of headphones having a housing with speaker means mounted therein; a head band connecting said headphone adapted to be fitted over the head of a user, said head band also containing electrical means electrically connected to the speakers in the headphones; at least one of said headphones being provided with at least a pair of female ports adapted to have receiver means mounted therein, said receiver means being constructed to receive signals emanating [emanating] from an auxiliary audio device and a cellular telephone; switching circuit means located in said housing with said female ports to interrupt audio signals received by said receiver means from an auxiliary audio device before such signals are transmitted to a speaker when said cellular telephone is activated by an incoming call and emits a signal; and a microphone connected to said housing for receiving audible messages from said user to a caller. The closest

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prior art, Jones (Jones, US Patent No. 6,606,506) in view of Antle (Antle, US Patent No. 4,499,593) and Inasaka (Inasaka, US Patent Application Publication US 2002/0094845), teach of an apparatus for providing portable audio programming for a user while preventing the user from missing telephone calls comprising: a pair of headphones having a housing with speaker means mounted therein; a head band connecting said headphone adapted to be fitted over the head of a user, said head band also containing electrical means electrically connected to the speakers in the headphones; at least one of said headphones being provided with at least a pair of female ports; receiver means, said receiver means being constructed to receive signals [emanating] emanating from an auxiliary audio device and a cellular telephone; and a microphone connected to said housing for receiving audible messages from said user to a caller, but alone or in combination with other prior art, not specifically of switching circuit means located in said housing with said female ports to interrupt audio signals received by said receiver means from an auxiliary audio device before such signals are transmitted to a speaker when said cellular telephone is activated by an incoming call and emits a signal or specifically of said headphones being provided with at least a pair of female ports adapted to have receiver means mounted therein.

Claims 16 – 20 are allowable as being dependent on claim 15.

Claim Objections

3. Claim 15 is objected to because of the following informalities: “emanating” (assumed to be emanating). Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 15 – 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 15, it was not understood where the receiver means were mounted, as the claim recites, "... at least a pair of female ports adapted to have receiver means mounted therein" (as this could be interpreted as meaning the receiver means were located within the female plugs). Appropriate correction is required.

Claims 16 – 20 are rejected for at least those reasons seen in independent claim 15.

6. Claims 19 and 20 recite the limitation "said receiver" in line 1 of each claim. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 3, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (Jones, US Patent No. 6,606,506) in view of Antle (Antle, US Patent No. 4,499,593).

Regarding claim 1, Jones teaches of an apparatus for providing portable audio programming for a user while preventing the user from missing telephone calls (Figure 6 and column 6, lines 39 –45) comprising: a pair of headphones each of which has a housing containing a speaker (Figures 1, 2, and 5 and column 3, lines 16 –19); a head band connecting each of said headphones adapted to be fitted over the head of a user so that the headphones fits over a user's

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ears (Figures 1, 2, and 5 and column 3, lines 16 –19 and column 3, lines 39 –50); cable plugs which are formed on the end of cables leading to an auxiliary audio device and a cellular telephone (Figures 1, 2, and 5 and column 3, lines 46 –51 and column 4, lines 15 –26); and a microphone mounted on a cable leading to said cellular telephone for receiving and transmitting audible messages during a telephone conversation (Figures 1, 2, 4 and 5 and column 3, lines 43 –6 and column 5, lines 62 –65 note that a the microphone is operatively coupled to the cellular system)

Jones does not specifically teach of said head band also containing electrical transmission means electrically connecting the speakers in the headphones (though it should be noted such is depicted in Figures 1 and 5); at least one of said headphones being provided with at least a pair of female ports adapted to receive.

In an analogous art dealing with stereo headphones, Antle teaches of said head band also containing electrical transmission means electrically connecting the speakers in the headphones (Figure 2, lines 21 –31); at least one of said headphones being provided with at least a pair of female ports adapted to receive cable plugs (column 3, lines 57 –68).

It would have been obvious to one skilled in the art at the time of invention to have included into Jones' personal entertainment communication device, Antle's modular headset, for the purposes of providing replaceable parts that can easily be changed in case of damage, as taught by Antle.

Regarding claim 3, Jones in view of Antle, teaches all the claimed limitations as recited in claim 1. Jones further teaches of wherein said headphone housing contains a switching circuit

which is activated by an incoming telephone call to switch off the audio signal from the auxiliary audio device (column 6, lines 39 –45).

Regarding claim 5, Jones in view of Antle teach all the claimed limitations as recited in claim 1. Jones further teaches of wherein said auxiliary sound device consists of a group selected from AM/FM radio, CD player, cassette players, MP3 player (column 2, lines 2 –14).

9. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (Jones, US Patent No. 6,606,506) in view of Antle (Antle, US Patent No. 4,499,593) as applied to claim 1 above, and further in view of Tuoriniemi et al (Tuoriniemi, US Patent No. 5,978,689).

Regarding claim 2, Jones in view of Antle teach all the claimed limitations as recited in claim 1. Jones in view of Antle, do not specifically teach of wherein said microphone contains a switch for activating and deactivating said cell phone.

In a related art dealing with personal communications and audio systems, Tuoriniemi teaches of wherein said microphone contains a switch for activating and deactivating said cell phone (Figure 1 and column 6, lines 55 –67).

It would have been obvious to one skilled in the art at the time of invention to have included into Jones and Antle's personal entertainment communication device, Tuoriniemi's microphone switch, for the purposes of enabling the microphone closest to the users mouth and stowing when in use (and thus out of a users way), as taught by Tuoriniemi.

10. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (Jones, US Patent No. 6,606,506) in view of Antle (Antle, US Patent No. 4,499,593) as applied to claim 1 above, and further in view of Kowalczyk (Kowalczyk, US Patent No. 5,862,235).

Regarding claim 4, Jones in view of Antle teach all the claimed limitations as recited in

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claim 1. Jones and Antle do not specifically teach of wherein at least one headphone housing is provided with marking indicia to indicate which female port is to be used with a cell phone and which female port is to be used with an auxiliary audio device.

In an analogous art dealing with broadcast equipment, Kowalczyk teaches of provided with marking indicia to indicate which female port is to be used (column 3, lines 13 –21).

It would have been obvious to one skilled in the art at the time of invention to have included into Jones and Antle's personal entertainment system, Kowalczyk's labeling system, for the purposes of proper connection of equipment, as taught by Kowalczyk.

11. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (Jones, US Patent No. 6,606,506) in view of Antle (Antle, US Patent No. 4,499,593) as applied to claim 1 above, and further in view of Attig et al (Attig, US Patent No. 5,247,705).

Regarding claim 6, Jones in view of Antle teach all the claimed limitations as recited in claim 1. Jones and Antle do not specifically teach of wherein said microphone contains voice activated software which controls volume of the cellular telephone audio volume.

In a related art dealing with a combined broadcast receiver and mobile, Attig teaches of wherein said microphone contains voice activated software which controls volume of the cellular telephone audio volume (column 3, lines 8 –16).

It would have been obvious to one skilled in the art at the time of invention to have included into Jones and Antle's personal communication system, Attig's voice control system, for the purposes of providing a voice control system enabling a user to command a device without manual intervention, as taught by Attig.

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12. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (Jones, US Patent No. 6,606,506) in view of Antle (Antle, US Patent No. 4,499,593) as applied to claim 1 above, and further in view of Pan et al (Pan, US Patent No. 6,304,764).

Regarding claim 7, Jones in view of Antle teach all the claimed limitations as recited in claim 1. Jones in view of Antle do not specifically teach of wherein said microphone contains voice activated software for activating and deactivating said cellular telephone.

In a related art dealing with hands-free operation of a mobile, Pan teaches of wherein said microphone contains voice activated software for activating and deactivating said cellular telephone (column 10, lines 36 -47).

It would have been obvious to one skilled in the art at the time of invention to have included into Jones and Antle's personal communication system, Pan's voice control system, for the purposes of providing a voice control system enabling a user to command a device without manual intervention (and thus both hands free to perform other tasks), as taught by Pan.

Citation of Pertinent Prior Art

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Inventor	Publication	Number	Disclosure
Callan	US Patent	6,301,490	Audio headset communication apparatus and method
Mack II et al.	US Patent	5,991,637	Integrated passive and active communications system
Mitra	US Patent Application	2002/0118825	Headset with retractable microphone and speaker
Ton et al.	US Patent Application	2003/0003969	Cellular Telephone Headset

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tanmay S Lele whose telephone number is (703) 305-3462. The examiner can normally be reached on 9 - 6:30 PM Monday – Thursdays and on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nay A. Maung can be reached on (703) 308-7745. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-0377.

Tanmay S Lele
Examiner
Art Unit 2684


NAY MAUNG
SUPERVISORY PATENT EXAMINER

tsl
March 18, 2004